

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshal United
States Courthouse, 40 Foley Square, in the City of New York,
on the 28th day of February, two thousand thirteen.

PRESENT: DENNIS JACOBS,
Chief Judge,
RALPH K. WINTER,
Circuit Judge,
LAURA TAYLOR SWAIN,*
District Judge.

- - - - -X
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

-v.-

12-66-cr

VAUGHN FLANDERS,
Defendant-Appellant

* Judge Laura Taylor Swain, of the United States District Court for the Southern District of New York, sitting by designation.

1 **FOR APPELLANT:** COLLEEN P. CASSIDY, Federal
2 Defenders of New York, New York,
3 New York.
4

5 **FOR APPELLEES:** JONATHAN COHEN, KATHERINE POLK
6 FAILLA, *for* Preet Bharara,
7 United States Attorney for the
8 Southern District of New York,
9 New York, New York.
10

11 Appeal from a judgment of the United States District
12 Court for the Southern District of New York (Castel, J.).
13

14 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
15 **AND DECREED** that the judgment of the district court be
16 **AFFIRMED.**
17

18 Flanders appeals from a judgment of the United States
19 District Court for the Southern District of New York
20 (Castel, J.), sentencing Flanders to twenty-four months'
21 imprisonment and six months' supervised release. We assume
22 the parties' familiarity with the underlying facts, the
23 procedural history, and the issues presented for review.
24

25 We review a district court's sentence for
26 reasonableness. E.g., United States v. Gonzalez, 529 F.3d
27 94, 97 (2d Cir. 2008). This includes sentences imposed for
28 violations of supervised release. Id. When, as here, a
29 defendant does not allege procedural error, we "consider the
30 substantive reasonableness of the sentence imposed under an
31 abuse-of-discretion standard." Gall v. United States, 552
32 U.S. 38, 51 (2007).
33

34 1. The applicable range for sentencing under the U.S.
35 Sentencing Commission Guidelines Manual ("Guidelines") was
36 three to nine months' imprisonment. Comment 3 of section
37 7B1.4 of the Guidelines states, "In the case of a Grade C
38 violation that is associated with a high risk of new
39 felonious conduct, . . . an upward departure may be
40 warranted." The district court properly found that
41 Flanders's conduct was associated with a high risk of new
42 felonies. Since being released from prison, Flanders
43 repeatedly engaged in lewd exposure and touching of others
44 in public places. Moreover, the treatment program in which
45 he was enrolled decided that it could no longer treat him
46 because he was not complying with its rules.
47

1 2. Flanders argues that the sentence was almost three
2 times longer than the top of the Guidelines' range. The
3 Second Circuit, following the Supreme Court, has stated that
4 courts should not use "mathematical formulas to gauge
5 substantive unreasonableness." Verkhoglyad, 516 F.3d at 134
6 (citing Gall, 552 U.S. at 47). In Verkhoglyad, this Court
7 affirmed a sentence for a violation of supervised release
8 that was more than five times the upper limit of the
9 Guidelines' five-to-eleven month term. 516 F.3d at 134.
10 Flanders's twenty-four month sentence is only a year and
11 three months more than the top end of the Guidelines range.
12

13 3. The district court's non-Guidelines sentence
14 relied principally on protection of the public from harm.
15 "[W]e have never held that a district court's particular
16 reliance on one factor to justify departing from the
17 Guidelines is suggestive of unreasonableness; we have only
18 said that '*unjustified* reliance upon any one factor'
19 suggests unreasonableness." United States v. Pope, 554 F.3d
20 240, 246 (2d Cir. 2009) (quoting United States v.
21 Rattoballi, 452 F.3d 127, 137 (2d Cir. 2006)). Such
22 reliance here was justified, as Flanders's repeated conduct
23 was clearly harmful to the public.
24

25 For the foregoing reasons, and finding no merit in
26 Flanders's other arguments, we hereby **AFFIRM** the judgment of
27 the district court.
28

29 FOR THE COURT:
30 CATHERINE O'HAGAN WOLFE, CLERK
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